

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2012-314-T

IN RE:)
Application of CYBH, LLC (f/k/a)
CYBH, LLC d/b/a Coastal Storage &)
Moving) for a Class E (Household)
Goods) Certificate of Public Convenience)
and Necessity for Operation of a Motor)
Vehicle Carrier.)
_____)

MOTION FOR WAIVER OF SOUTH CAROLINA CODE OF REGULATIONS 103-177

Pursuant to S.C. Code Ann. Regs. 103-101(2) and 103-803, CYBH, LLC (“CYBH” or the “Company”) respectfully requests that the Public Service Commission of South Carolina (“Commission”) grant CYBH waiver of S.C. Code Ann. Regs. 103-177. Given the unique circumstances described below, compliance with this regulation is practically impossible, and enforcing this regulation restricts CYBH from receiving a Class E Certificate of Public Convenience and Necessity, despite a Commission Order granting CYBH’s Application for this Certificate and despite the fact that CYBH has satisfied required insurance and safety filings necessary for certification, except for a minor technicality described herein. Finally, CYBH respectfully requests the Commission to consider this motion in an expedited manner.

I. BACKGROUND

On May 30, 2013, the Commission issued an Order granting the application of CYBH for a Class E (Household Goods) Certificate of Public Convenience and Necessity to transport goods throughout the state of South Carolina.¹ As the Commission’s Order explains, in order to satisfy an intervenor in the Docket, the Company agreed to amend its name from “CYBH, LLC d/b/a Coastal Storage & Moving” to “CYBH, LLC” for its South Carolina intrastate operations. The

¹ Order Granting Certificate, Order No. 2013-337 (May 30, 2013).

Company was certificated by the United States Department of Transportation (“U.S. DOT”) for its intrastate operations under the name “CYBH, LLC d/b/a Coastal Storage & Moving,” and the Company has been doing business under that name for approximately 11 months. Given the Company’s commitment to amend its name for its South Carolina operations, the Commission’s Order instructed that the Company’s Certificate of Public Convenience and Necessity (“Certificate”) be issued in the name of CYBH, LLC.

On June 13, 2013, the South Carolina Office of Regulatory Staff (“ORS”) informed the Company that certain informational filings must be updated by CYBH, LLC before a certificate could be issued. ORS’s determination in this regard was based upon the fact that filed Form E, “Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance,” and Form H, “Uniform Motor Carrier Cargo Certificate of Insurance,” were in the name of “CYBH LLC DBA Coastal Storage & Moving.” A copy of filed Form E and Form H is attached to this motion as Exhibit A.

From June 13, 2013, until present, CYBH has worked to have its Form E and Form H amended by its insurance carriers, Zurich American Insurance Company (“Zurich”) (for Form E) and Century Surety Company (for Form H).² Counsel for the Company has also attempted to work with CYBH’s insurance carriers. Market Finders Insurance Company (“Market Finders”) serves as the underwriter for Zurich and is the entity with authority to change the name to whom the policy is issued. Ms. Randi Lynch of Market Finders refused to communicate with CYBH or its Counsel, and thus all communication has been conducted via CYBH’s insurance agent, Mr. Larry Short.³ According to communication from Mr. Short, Market Finders will not amend the insurance policy to remove the reference to the “DBA” because the “DBA” is included in the

² These insurance policies also insure CYBH’s interstate moving business.

³ See Exhibit B.

Company name as registered with the U.S. DOT.⁴ Efforts to amend Form H have been unsuccessful, as well.

The Company cannot remove the “DBA” from its registered name at the U.S. DOT because the Company operates under its trade name for its established interstate moving business. Additionally, the Company attempted to change its name at the U.S. DOT to “CYBH, LLC DBA Coastal Storage & Moving and CYBH, LLC” by submitting a name change request on June 18, 2013. On September 6, 2013, a representative from the Federal Motor Carrier Safety Administration (“FMCSA”) informed the Company via a telephone call that its name change request was denied as an improper addition of a trade name. As such, the Company has exhausted all options in order to amend its Form E and Form H.

II. REQUEST FOR WAIVER AND EXPEDITED TREATMENT

S.C. Code Ann. Regs. 103-101(2) provides that waiver of regulations is appropriate in “individual cases when strict compliance with any rule or rules produces unusual difficulty and is not in the public interest.” The facts here demonstrate that strict compliance with S.C. Code Ann. Regs. 103-177 is unusually difficult and it not in the public interest. Given the Company’s commitment to operate its intrastate business under the name of CYBH, LLC, which is different than the name of its business for interstate moving services, the Company cannot have its certificates of insurance issued in the “full and correct name as that name appears on the application or certificate of the motor carrier,” as required in S.C. Code Ann. Regs. 103-177. CYBH requests waiver of this regulation to permit it to provide Form E and H issued in the name “CYBH, LLC DBA Coastal Storage & Moving” and have its Certificate issued.

The unique facts in this case warrant waiver of this regulation. It is the Company’s commitment to changing its name, which was made voluntarily to satisfy an intervenor’s

⁴ See Exhibit C.

concerns regarding competition, which prohibits the Company from complying with the specific requirements of S.C. Code Ann. Regs. 103-177.⁵ As described above, CYBH has made extensive efforts to remedy this problem on its own, but has had no success. Additionally, CYBH has worked with ORS to reach a solution, which eventually led to this motion. Finally, waiving this regulation will not compromise the intent of the regulation, which is to require motor carriers seeking certification to provide evidence they are properly insured. It is clear that CYBH carries the insurance required for its Certificate of Public Convenience and Necessity.

CYBH respectfully requests the Commission consider this motion in an expedited manner. More than four months have passed since the Commission issued its Order granting CYBH's Application, and CYBH has met all of the Commission's rules and regulations to be certificated, but for the minor technicality involving the inclusion of its trade name in its insurance policies. Finally, ORS has no objection to the Commission granting the requested waiver.

III. CONCLUSION

CYBH respectfully requests this Commission grant its Motion for Waiver of S.C. Code Regs. 103-177 in an expedited manner to permit CYBH to receive its Certificate for Public Convenience and Necessity as soon as possible.

Respectfully submitted,

/s/ Rebecca J. Dulin

Rebecca J. Dulin

Parker Poe Adams & Bernstein LLP

⁵ For the record, CYBH notes that it agreed to amend its name in exchange for the intervenor withdrawing from this Docket, which has not occurred.

1201 Main Street, Suite 1450
Columbia, South Carolina 29201
Phone: (803) 253-8937
Fax: (803) 255-8017
Email: rebeccadulin@parkerpoe.com
Attorney for CYBH, LLC

Dated this 17th day of October, 2013.

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2012-314-T

IN RE:)	
Application of CYBH, LLC d/b/a Coastal)	
Storage & Moving for a Class E (Household)	CERTIFICATE OF SERVICE
Goods) Certificate of Public Convenience)	
and Necessity for Operation of a Motor)	
Vehicle Carrier.)	
_____)	

This is to certify that I, Barbara A. Gzik, a Legal Secretary with the law firm of Parker Poe Adams & Bernstein LLP, have this day caused to be served upon the person(s) named below the **Motion for Waiver of South Carolina Code of Regulations 103-177** in the foregoing matter by electronic mail and/or by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

(via email: cedwards@regstaff.sc.gov):
Courtney Dare Edwards, Esq.
South Carolina Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, SC 29201

(via email: scorac@aol.com):
Jack Scoville, Esq.
3543 Azalea Station
Wilmington , NC 28409

Dated at Columbia, South Carolina, this 17th day of October, 2013.

/s/ Barbara A. Gzik
Barbara A. Gzik

Exhibit A

Docket No. 2012-314-T

FORM E
UNIFORM MOTOR CARRIER BODILY INJURY AND PROPERTY
DAMAGE LIABILITY CERTIFICATE OF INSURANCE

RECEIVED

AUG 15 2012

Filed with SC PUBLIC SERVICE COMMISSION

(hereinafter called Commission)

THIS INSURANCE IS PRIMARY INSURANCE WITH LIMITS OF \$750,000

T.T.W.W/W
CSL OR EA. ACCIDENT.

This is to certify, that the ZURICH AMERICAN INSURANCE CO OF ILLINOIS
13810 FNB PARKWAY, OMAHA, NE 68154

hereinafter called Company)
(402) 963-5000

has issued to: CYBH, LLC DBA
COASTAL STORAGE & MOVING

7269 HWY 707
MYRTLE BEACH, SC 29588

a policy or policies of insurance effective from 8/17/12 12:01 A.M., standard time at the address of the insured stated in said policy or policies and continuing until canceled as provided herein, which, by attachment of the Uniform Motor Carrier Bodily Injury and Property Damage Liability Insurance Endorsement, has or have been amended to provide automobiles bodily injury and property damage liability insurance covering the obligations imposed upon such motor carrier by the provisions of the motor carrier law of the State in which the Commission has jurisdiction or regulations promulgated in accordance therewith.

Whenever requested, the Company agrees to furnish the Commission a duplicate original of said policy or policies and all endorsements thereon.

This certificate and the endorsement described herein may not be canceled without cancellation of the policy to which it is attached. Such cancellation may be effected by the Company or the insured giving 30 days' notice in writing to the State Commission, such 30 days' notice to commence to run from the date notice is actually received in the office of the Commission.

Countersigned at GREENVILLE, SC
this 17TH day of AUGUST 2012

Insurance Company File No. TRK9838792-00
(Policy Number)

Authorized Company Representative

This form determined by the National Association of Regulatory Utility Commissioners and promulgated by the Interstate Commerce Commission pursuant to the provisions of Section 202(b) (2) of the Interstate Commerce Act (49 U.S.C., sec. 302(b) (2)). IRB 3539B

Form H
Uniform Motor Carrier Cargo
Certificate of Insurance

OFFICE OF REGULATORY STAFF
RECEIVED
AUG 23 2012

Filed with South Carolina Department of Motor Vehicles
(Name of Commission)

(hereinafter called Commission)

This is to certify that the Century Surety Company

(Name of Company)

(herein after called Company) of 465 Cleveland Ave, Westerville, OH, 43082
(Home Address of Company)

has issued to CYBH, LLC (DBA)Coastal Storage & Moving
(Name of Motor Carrier)

of 7269 Hwy 707, Myrtle Beach, SC, 29588
(Address of Motor Carrier)

A policy or policies of insurance effective from 08/02/2012 12:01 A.M. standard time at the address of the insured stated in said policy or policies and continuing until cancelled as provided herein, which, by attachment of the Uniform Motor Carrier Cargo Insurance Endorsement has or have been amended to provide cargo insurance covering the obligations imposed upon such motor carrier by the provisions of the motor carrier law of the State in which the Commission has jurisdiction or regulations promulgated in accordance therewith.

Whenever requested, the Company agrees to furnish the Commission a duplicate original of said policy or policies and all endorsements thereon.

This certificate and the endorsement described herein, may not be cancelled without cancellation of the policy to which it is attached. Such cancellation may be effective by the Company or the insured giving thirty (30) days' notice in writing to the State Commission, such thirty (30) days' notice to commence to run from the date notice is actually received in the office of the Commission.

Countersigned at 465 Cleveland Ave Westerville OH 43082 this 22nd day of
(STREET ADDRESS) (CITY) (STATE) (ZIP CODE)

Aug 20 12

Insurance Company File No. CCP767186
(Policy Number)

James Jasko
(Authorized Company Representative)

Exhibit B

Docket No. 2012-314-T

Dulin, Rebecca J.

From: Larry [larry@lwshortins.com]
Sent: Wednesday, September 25, 2013 9:43 AM
To: Dulin, Rebecca J.
Subject: FW: TRK9838792-00 COASTAL STORAGE & MOVING

From: Randi Lynch [mailto:Rlynch@mfic.com]
Sent: Tuesday, September 24, 2013 4:36 PM
To: Larry
Cc: Stephanie Young
Subject: FW: TRK9838792-00 COASTAL STORAGE & MOVING

LARRY

WE CAN'T TALK W/ THE INSURES. THE PROBLEM IS BOTH STATE & DOT MUST BE IN THE SAME NAME. STEPHANIE PLEASE CHECK & SEE IF THEY HAVE BEEN CHANGED

RANDI

Randi Lynch

VP/Southern Region
Market Finders Insurance Corp.
Greenville, SC 29606
(864) 675-0170 phone
(864) 675-0176 fax
(800) 444-4129 watts

Exhibit C
Docket No. 2012-314-T

Dulin, Rebecca J.

From: Larry [larry@lwshortins.com]
Sent: Wednesday, September 25, 2013 3:53 PM
To: Dulin, Rebecca J.
Subject: FW: TRK9838792-01COASTAL STORAGE & MOVING

Unfortunately this her answer to what I purposed earlier on this email I really dont know what else to do

From: Randi Lynch [mailto:Rlynch@mfic.com]
Sent: Wednesday, September 25, 2013 3:47 PM
To: Larry
Subject: RE: TRK9838792-01COASTAL STORAGE & MOVING

CAN'T DO THAT. THE FILINGS & POLICY FOR BOTH MUST BE IN THE SAME NAME

Randi Lynch

VP/Southern Region
Market Finders Insurance Corp.
Greenville, SC 29606
(864) 675-0170 phone
(864) 675-0176 fax
(800) 444-4129 watts

From: Larry [mailto:larry@lwshortins.com]
Sent: Wednesday, September 25, 2013 3:44 PM
To: Randi Lynch
Subject: RE: TRK9838792-01COASTAL STORAGE & MOVING

Eliminate dba Coastal Storage & Moving from the form E thats what they want

From: Randi Lynch [mailto:Rlynch@mfic.com]
Sent: Wednesday, September 25, 2013 3:21 PM
To: Larry
Cc: Stephanie Young
Subject: RE: TRK9838792-01COASTAL STORAGE & MOVING

LARRY WHAT DO THEY WANT?????? THAT IS THE WAY THE NAME IS SET UP. WE CAN'T JUST CHANGE TO WHAT THEY WANT??????

Randi Lynch

VP/Southern Region
Market Finders Insurance Corp.

Greenville, SC 29606
(864) 675-0170 phone
(864) 675-0176 fax
(800) 444-4129 watts

From: Larry [mailto:larry@lwshortins.com]
Sent: Wednesday, September 25, 2013 3:17 PM
To: Randi Lynch
Cc: Stephanie Young
Subject: FW: TRK9838792-01COASTAL STORAGE & MOVING

From: Dulin, Rebecca J. [mailto:rebeccadulin@parkerpoe.com]
Sent: Wednesday, September 25, 2013 3:14 PM
To: Larry
Subject: Re: TRK9838792-01COASTAL STORAGE & MOVING

Larry,
This hasn't changed anything, unfortunately. I don't see how this is amended from the earlier version?

Sent from my iPhone. Please excuse brevity and typos.

On Sep 25, 2013, at 3:07 PM, "Larry" <larry@lwshortins.com> wrote:

See below for response from StephanieYoung Hope this works! Larry

Rebecca Dulin
Associate



1201 Main Street | Suite 1450 | Columbia, SC 29201
Phone: 803.253.8937 | Fax: 803.255.8017 | www.parkerpoe.com | [map](#)

From: Stephanie Young [mailto:syoung@mfic.com]
Sent: Wednesday, September 25, 2013 2:56 PM
To: LARRY@LWSHORTINS.COM
Subject: TRK9838792-01COASTAL STORAGE & MOVING

Hi Larry,

The SC Form E filing name looks strange because of how the filing form prints out but we have the actual name listed as:

CYBH, LLC DBA Coastal Storage and Moving

This is how the name is listed on their DOT filings.

I hope this helps and if you need anything further please let me know.

Thank you and have a great day!

<i>Handling the Unusual Risk... Unusually Well</i>	
<i>Stephanie Young</i> Commercial Auto Underwriting Assistant Phone: 1-800-626-5660 ext 1156 Direct Fax: 502-410-6742 syoung@mfic.com www.mfic.com	Market Finders Insurance Corp. P. O. Box 6549, 9117 Leesgate Road Louisville, KY 40220

<Attachment.pdf>

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